calculations as to the past decline of the Singapore dollar. It should take the change of the value of money into account in a general broad way. As was said by Salmon L.J. in *Fletcher* v. *Autocar and Transporters, Ltd.*,[8] at page 750: —

"The damages awarded should be such that the ordinary sensible man would not instinctively regard them as either mean or extravagant, but would consider them to be sensible and fair."

Such an assessment can be reached only by the collective instinct of the judges, using their knowledge of the current values of not only money but society as well, for the assessment of personal loss is to express its worth in dollars and cents according to current social standards as reflected in the general level of awards by the courts.

Reverting to the facts of this case, it will be seen that the Deputy Registrar was clearly in error in assessing general damages in the manner in which he did. On the facts, the principle of overlapping was applicable and he was wrong in not scaling down the total on that account. He was also wrong in assessing total damages first and then applying a blanket increase of 20 per cent. The increase in the cost of living should have been taken into consideration by the learned Deputy Registrar in assessing the amount of general damages. In other words a lump sum should have been awarded after taking into consideration all the relevant factors including the increase in the cost of living.

The quantum of damages is very much a question of fact and degree and a court of appeal is always reluctant to interfere with the assessment of a judge unless there has been misdirection in law, or the amount is manifestly too much or too little. As was pointed out by Viscount Simon L.C. in *Nance* v. *British Columbia Electric Rail Co., Ltd.*,[9] an appeal against the decision of a judge upon the *quantum* of damages will not be allowed unless either: —

(i) the judge has applied a wrong principle of law; or

(ii) "the amount awarded is either so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage."

In this case the increase in the amount of damages due to the rise in the cost of living is in our opinion offset by the amount by which the damages assessed by the Deputy Registrar should have been reduced as a result of the application of the principle of overlapping. We are therefore unable to say that the amount of $24,000 awarded as general damages is so inordinately low that it is "a wholly erroneous estimate of the damage." The appeal is accordingly dismissed.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Batterberg & Talma.*

HILBORNE v. LAW SOCIETY OF SINGAPORE

[C.A. (Wee Chong Jin C.J., Winslow and Kulasekaram JJ.), March 5, 1973]

[Singapore — Civil Appeal No. 39 of 1972]

Advocate and Solicitor — Disciplinary proceedings — Improper words uttered by counsel — Judge confirming order made by Council of Law Society for payment of penalty — Whether appeal lies to Court of Appeal — Supreme Court of Judicature Act (Cap. 15), s. 29 — Legal Profession Act (Cap. 217), ss. 86(2), 89(1), 95 and 96.

The appellant, an advocate and solicitor, applied to the Court of Appeal for the further hearing of an appeal as he alleged that he had received fresh information which showed that statements made by the respondents in the case were either not true or inaccurate and misleading. The judges of the Court of Appeal after hearing the appeal in Chambers refused to reopen the appeal and the appellant then uttered the words that "in refusing to reopen the appeal the judges were setting the seal on dishonesty." The Registrar of the Supreme Court on the instructions of the judges requested the Law Society of Singapore to act under section 86(2) of the Legal Profession Act. The Council of the Law Society after considering the report of the inquiry committee ordered the appellant to pay a penalty of $250. An application was then made by the appellant to a judge to set aside the council's order but the learned judge refused to set aside the order. The appellant thereupon appealed to the Court of Appeal.

Held, dismissing the appeal: (1) the order made by the judge of the High Court in this case was not an order made by the High Court in a civil matter either in the exercise of its original or its appellate jurisdiction and therefore the Court of Appeal had no jurisdiction to hear and determine the appeal;

(2) the order in this case was made under a special procedure in respect of disciplinary proceedings affecting the legal profession and the Court of Appeal had no jurisdiction to entertain an appeal from the order made by the judge;

(3) in any case, there is no reason to interfere with the order of the Council of the Law Society as the words uttered by the appellant were improper and should not have been used.

COURT OF APPEAL.

T. G. Dunbar for the appellant.

Lim Tiong Quee for the respondents.

Wee Chong Jin C.J.: At the conclusion of the hearing, we dismissed this appeal against the refusal of Chua J. on 20th June 1972 in Chambers to set aside an order of 5th May 1972 made by the Council of the Law Society of Singapore that the appellant should pay a penalty of $250 under section 89(1) of the Legal Profession Act (Cap. 217) (hereinafter referred to as "the Act").

We now give our reasons.

A preliminary question arose as to the competence of such an appeal to the Court of Appeal in the absence of any specific provision to this effect in Part VII of the Act which relates to disciplinary proceedings affecting members of the legal profession. Further, it seemed to us that a doubt arose as to whether the order made under section 95 of the Act was an order made in the exercise of the original civil jurisdiction conferred on the High Court by section 29 of the Supreme Court of Judicature Act (Cap. 15) having regard to the subject matter of the appeal and the context of the situation in which the action of the respondent was originally invoked, to say nothing of

the fact that even where cause of sufficient gravity for disciplinary action under section 93 has been found, an application proceeds under section 98 for an order to show cause which, before being made absolute, is heard by a court of three judges and not by the Court of Appeal.

Without determining this preliminary question, we proceeded to hear the appeal on its merits, on the basis, as counsel for the respondent seemed at one stage to suggest, that jurisdiction did in fact exist to hear the appeal despite our own doubts in the matter then. We would revert to this later.

Counsel for the appellant, Mr. T. G. Dunbar, opened the appeal on its merits with the proposition that the order for the penalty imposed on Mr. Hilborne should have been set aside because what Mr. Hilborne had done was only a "perfectly proper right of exercise of his forensic skill" of which the Council took too strict a view by determining that although no cause of sufficient gravity existed for a formal investigation he should be ordered to pay a penalty.

It is therefore necessary briefly to set out the facts which led to the Council's order for the penalty of $250.

In *Suit No. 1093 of 1970* the appellant acted for the plaintiffs against one Tan Eng Huat and Golden Palace Private Ltd. in a claim for $2,510 being the balance due in respect of furniture delivered to the second defendants' premises at the request of the first defendant. In the alternative, it was claimed that, if the same had been ordered by first defendant for the use of the second defendants, a company, the second defendants were liable. The writ was issued on 29th May 1970 and the first defendant, having entered an appearance, filed his defence on 12th June 1970. The second defendants entered an appearance but did not file a defence although their solicitors wrote two letters to the plaintiffs' solicitor denying the claim on the ground that it was the first defendant who was personally responsible for ordering the furniture.

On 14th July 1970, the plaintiffs obtained judgment against the second defendants in default of defence for the amount claimed with costs.

On 21st July, the second defendants applied for the judgment to be set aside, supporting their application by an affidavit filed by a clerk of their solicitors. An affidavit in reply by a clerk of the appellant's firm was filed on 24th July and on 27th July the judgment was set aside with leave for the second defendants to file their defence which was accordingly filed on 20th August.

A notice of appeal having been filed by the plaintiffs, the matter came before the Court of Appeal on 20th and 21st January, 1971 and was dismissed.

Subsequently the appellant received information from the solicitor for the first defendant, and Mr. Ong Swee Keng, a shareholder in the second defendants, that certain statements in the proceedings filed by the second defendants were either not true or inaccurate and misleading.

As the order made by the Court of Appeal had not yet been passed and entered, the appellant applied on behalf of the plaintiffs for a further hearing of the appeal in view of the fresh information he had received. This application was heard in Chambers on 13th March 1971 before two members of the Court of Appeal which had orally dismissed the appeal, the other member being indisposed.

During the application for further hearing, after the said judges had refused to re-open the appeal, the appellant uttered the words that, in refusing to do so, the judges were setting a seal on dishonesty.

The Registrar of the Supreme Court, on the instructions of the said judges requested the Law Society to act under section 86(2) of the Act.

On being called upon by the Inquiry Committee of the Law Society for an explanation, the appellant in a letter dated 24th May, 1971 at Ex. KEH-16 said, after dealing with facts,

> "The object of appearing before their Lordships on the 13th March 1971, was to re-open hearing of the appeal on the ground that both courts had been misled, inasmuch as the true and material facts had not been disclosed at any time from the commencement of the correspondence (4.6.70) to the hearing of the appeal (21.1.1971). In the event, their Lordships did not deem fit to re-open the hearing of the appeal. It seemed, and still seems, to me that for a litigant to misinform the court in circumstances such as these was dishonesty in the legal, if not the actual sense, and for a court having been appraised of the nature of the falsity, to fail to express any disapproval of the same, let alone investigate the matter further, was tantamount to condonation of that dishonesty. It was these circumstances that led to the observation which I made. No doubt it was a somewhat blunt expression of opinion but I do not recall either of their Lordships taking objection at the time, either to the content of the words or the manner in which they were expressed."

After considering the report of the Inquiry Committee, the Council of the Law Society, as we have already said, ordered the appellant to pay a penalty of $250 and the Council's order was affirmed by a judge of the Supreme Court. We can see no reason to interfere with the order made by the Council. The words uttered by the appellant were in our view improper and ought not to have been used.

It was argued that those words could not amount to contempt of court and that the two judges to whom those words were addressed did not at the time consider that the appellant was in contempt of court in uttering those words. The point is irrelevant because, whether or not the appellant was guilty of contempt of court, we are of the opinion that it was for the Council under section 88 to determine whether or not in the circumstances the appellant had said something which in the view of the Council ought not to have been said by a member of the profession, and, if so, whether or not the impropriety was sufficiently serious to merit the imposition of a monetary penalty. As we have just said we agree with the view taken by the Council. For these reasons we upheld the order made by Chua J.

With regard to the question of jurisdiction on which we reserved our opinion, we are of the view that, although section 95 of the Act empowers an application such as the appellant's to be made by way of originating summons to a judge to set aside the

Council's order, the order made herein is not an order made by the High Court in a civil matter either in the exercise of its original or of its appellate jurisdiction. Section 29 of the Supreme Court of Judicature Act (Cap. 15) confers jurisdiction on the Court of Appeal to hear and determine an appeal only in such cases.

Moreover, the doubts we had in this matter as earlier expressed have not in any way been dispelled.

The provisions of Part VII of the Act clearly contemplate a special procedure in respect of disciplinary proceedings affecting the profession. One has only to consider the position that would arise should a person who had made a written complaint to the Society have been dissatisfied with the Council's action. Such a person could apply to a judge by way of originating summons under section 96 of the Act and the only orders a judge could make would be to affirm the Council's decision or to direct the Society to apply to the Chief Justice for the appointment of a Disciplinary Committee. Surely it cannot be successfully contended that an appeal would lie in such circumstances to the Court of Appeal. As the Act provides, if a Disciplinary Committee makes a finding adverse to the advocate and solicitor the procedure prescribed under section 98 of the Act would apply and the matter would eventually go before a Court of three Judges and not before the Court of Appeal.

Moreover, the order made by a single judge under sections 95 and 96 is not an interlocutory order within the meaning of section 34 of the Supreme Court of Judicature Act.

We are accordingly of the opinion that the Court of Appeal has no jurisdiction to entertain an appeal of this nature from an order made by a judge under section 95 of the Act.

Appeal dismissed.

YAP ENG THONG & ANOR. v. FABER UNION LTD.

[O.C.J. (Winslow J.) March 8, 1973]

[Singapore — Suit No. 194 of 1971]

Contract — Agreement for sale of land — Agreement subject to signing of formal agreement of sale — Whether there was binding contract before signing of agreement of sale.

The plaintiffs signed an agreement for the purchase of a semi-detached bungalow to be constructed on a piece of land and paid $500 as option money. It was agreed that within six weeks of the agreement the plaintiffs should sign an agreement of sale with the owners, failing which the owners were to be at liberty to re-sell the property to another buyer and to forfeit the option money. No agreement of sale was signed and the owners therefore cancelled the sale. The plaintiffs claimed damages for breach of contract, insisting that there was already a legally binding contract.

Held: the agreement did not create a legally binding contract and therefore the action of the plaintiffs must be dismissed.

Cases referred to:-

(1) *Yeo Long Seng* v. *Lucky Park (Pte.) Ltd.* [1971] 1 M.L.J. 20.

(2) *Winn* v. *Bull* (1877) L.R. 7 Ch. D. 30.

(3) *Charles Rickards Ltd.* v. *Oppenhaim* [1950] 1 K.B. 616 at p. 623.

CIVIL SUIT.

M. N. Samy for the plaintiffs.

Chan Kian Hin for the defendants.

Winslow J.: On 21st July 1969, the plaintiffs signed an agreement at AB16 whereby they agreed to purchase a Semi-Detached Bungalow — Type 'C' to be constructed on Private Lot 70 in Faberhills on Government Resurvey Lots 164, 165 and 166 of Mukim V at the price of $57,500,

"whereof a sum of $500.00 being option money is now paid to the owners Faber Union Limited on the following conditions:—

1. That within 6 weeks from the date hereof we shall sign an agreement of sale with the owners and send the same together with the payment as therein mentioned to Messrs. Lee & Lee of ..., the owners' solicitors and shall thenceforth make payments of the balance of the purchase price by instalments in accordance with the schedule of payments contained herein and in the said agreement which I have seen.

2. That if we fail to comply with the requirements set out in clause 1 hereof the owners shall be at liberty to sell the above property to any other prospective buyer without notice to us in which case the option money of $500.00 so paid shall be forfeited to the owners.

3. ...

4. ...

5. That time shall be the essence of this agreement."

A copy of the agreement for sale of such houses in the usual form is at AB1-12 and, *inter alia*, contains a Schedule of Specifications relating to Type 'C' houses.

The plaintiffs at AB16, it will be observed, stated that they had seen such an agreement although, in his evidence, the first plaintiff denied having seen it. The second plaintiff did not give evidence. The first plaintiff is, in my opinion, bound by what he stated in his signed agreement of 21st July, 1969 notwithstanding his later denial. Although he alleged that the Office and Site Manager (Teo Teck Heng) gave him various assurances he was not called as a witness and there was no evidence that he was not available in Singapore.

Briefly, the plaintiffs did not sign such an agreement of sale nor did they send the same to Messrs Lee & Lee within 6 weeks from 21st July 1969.

Time was of the essence of this agreement of 21st July 1969. They accordingly failed to comply with an essential pre-requisite or condition set out in clause 1 aforesaid as a result of which the owners/defendants became entitled to sell the property, if so disposed, without notice to the plaintiffs, and to forfeit the option money. It should be noted that clause 4 of the agreement of 21st July 1969 relating to "time being of the essence of this agreement" applies to the option agreement and not to the agreement for sale referred to therein as counsel for the plaintiffs thought (see AB33 and AB38). That agreement for sale at AB3 refers separately to time being of the essence of that contract (see clause 4 thereof).

The owners exercised that power in April 1970, having "called off" the sale on 12th November, 1969